

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation
Against:

Case No. VN-2011-287

STEFANI CRISTINA HORTON
P.O. Box 8097
Santa Rosa, CA 95407

OAH No. 2012040891

Vocational Nurse License No.
VN 171844

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on February 23, 2013.

IT IS SO ORDERED this 24th day of January, 2013.



Todd D'Braunstein, PT
President

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STEFANI CRISTINA HORTON

Respondent.

Case No. VN-2011-287

OAH No. 2012040891

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter on October 25, 2012, in Santa Rosa, California.

Deputy Attorney General Brett A. Kingsbury represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Respondent Stefani Cristina Horton failed to appear at hearing. Respondent was given notice of the time and place for hearing as required by law. At the request of the respondent the venue of the hearing was changed to Santa Rosa. The matter proceeded by default.

Respondent was properly given notice of the citation, notice of the original hearing and notice of the change of venue of the hearing. Upon proof of compliance with Government Code sections 11505 and 11509 the matter proceeded as a default against respondent Stefani Cristina Horton pursuant to Government Code section 11520.

The record was closed and the matter was submitted on October 25, 2012.

FACTUAL FINDINGS

1. Teresa Bello-Jones, J.D., M.S.N., R.N., issued Citation Number CV 2011-287 to respondent, Stefani Cristina Horton, while acting in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California.

2. On April 21, 1995, the Board issued Vocational Nurse License Number VN 171844 to respondent. It will expire on January 31, 2013, unless renewed. The evidence does not establish when and where respondent worked as a vocational nurse. The evidence reflects, respondent works for a nursing employer and provides in home care for a child suffering from microcephally and cerebral palsy.

3. On January 25, 2012, the Board issued Citation CV 2011-287 for violation of Business and Professions Code sections 2878, subdivision (a) (unprofessional conduct); 2878.5, subdivision (c) (conviction of a criminal offense involving possession of narcotic or a dangerous drug); 2878, subdivision (e) (false statement/information on a license application); and, 2878, subdivision (f) (conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse). Respondent was ordered to pay an administrative fine in the amount of \$1,000.

4. On January 22, 1968, respondent was convicted in the County of Tulsa, State of Oklahoma, of stealing sandals worth \$4.99. Respondent completed the terms and conditions of her sentence. The evidence does not establish that this 1968 conviction is substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

5. On January 20, 1971, respondent was convicted in Sacramento County, on her plea of guilty of violating Health and Safety Code section 11501, (sale of narcotic). Respondent's guilty plea was withdrawn and she was referred to a Civil Addict Commitment program pursuant to Welfare and Institutions Code section 3051. On December 22, 1973, respondent completed two consecutive narcotic free years and was determined to be eligible for discharge from the Civil Addict Commitment program. On January 25, 1974, pursuant to Welfare and Institutions Code section 3200, respondent was discharged from Civil Addict Commitment at the California Rehabilitation Center and the criminal proceedings were terminated.

6. On August 22, 2011, respondent requested a hearing and also provided a written letter of explanation of the facts and circumstances surrounding her 1968 Oklahoma conviction. However, there was no explanation as to why she did not disclose this information on her 1994 application. In this same letter, respondent explains that the failure to disclose the 1971 conviction was that she was confused as to whether or not there was a conviction. Respondent's confusion is understandable in light of the Sacramento County court records which withdraw her guilty plea and transform the matter into a Civil Addict Commitment that was discharged and the criminal matter dismissed. As to the Board's allegation of a failure to disclose respondent's 1971 conviction, the Board has not met its burden of proof that respondent was required to disclose this 1971 incident on her application.

7. The evidence did not establish that any complaints or prior disciplinary action had been taken against her license. Their evidence did not establish that respondent had any subsequent arrests or convictions over the past 40 years.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 125.9, the Board is authorized to issue a citation to a licensee requiring payment of an administrative fine. Pursuant to Business and Professions Code section 2876, subdivision (e), the Board has discretion to take disciplinary action it deems appropriate.

2. Pursuant to Business and Professions Code section 2878, subdivisions (a) and (e), the Board may take the disciplinary action it deems appropriate for unprofessional conduct of a vocational nurse licensee who makes false statements or information related to an application.

Respondent failed to disclose her 1968 conviction and by doing so provided false information on her application. By reason of the matters listed in Findings 4 and 6, cause exists pursuant to Business and Professions Code section 2878, subdivisions (a) and (e), to issue a citation.

3. Pursuant to Business and Professions Code section 2878, subdivision (a), the Board may issue a citation to a licensee base upon unprofessional conduct. Unprofessional conduct includes the conviction of a criminal offense involving possession of any narcotic (Bus. & Prof. Code § 2878.5, Subd.(c),) and the conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse (Bus. & Prof. Code § 2878, Subd.(f).)

The 1971 incident involving respondent was a civil commitment that was subsequently discharged and dismissed by Sacramento County. This 1971 civil commitment did not constitute a "conviction" and as such there was no obligation by respondent to disclose this matter on her 1994 application. By reason of the matters set forth in Findings 5 and 6, cause does not exist pursuant to Business and Professions Code sections 2878, subdivision (a), 2878.5, subdivision (c), or 2878, subdivision (f) to impose a citation fine on respondent.

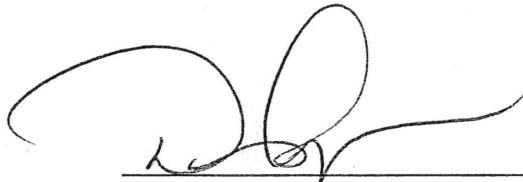
4. Cause exists to sustain part of the Citation Number CV 2011-287 by reason of Findings 4 and 6. However, the amount of the citation shall be reduced to a \$200 fine.

ORDER

1. Respondent Stefani Cristina Horton's appeal of Citation Number CV 2011-287 is granted in part and denied in part.

2. Citation Number CV 2011-287, is affirmed in part. However, the citation fine imposed of \$1,000 is reduced to \$200. Respondent shall pay the Board the \$200 citation fine prior to the Board renewing her license.

DATED: November 6, 2012

A handwritten signature in black ink, appearing to read 'Dianna L. Albin', is written over a horizontal line.

DIANNA L. ALBIN
Administrative Law Judge
Office of Administrative Hearings



CITATION ORDER

Pursuant to Business and Professions Code Section 125.9, the Board of Vocational Nursing and Psychiatric Technicians (hereinafter referred to as the "Board") issues this class 'C' citation to:

Stefani Horton
PO Box 8097
Santa Rosa, CA 95407

Citation Number	Fine Assessed
CV 2011-287	\$1,000.00

Licensing History:

Board records reflect that on **April 21, 1995**, the Board issued license number **VN 171844** to **Stefani Horton**; said license will expire on **January 31, 2013**, unless renewed.

Cause for Citation:

Violation of **Section 2878 (a)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

- (a) Unprofessional conduct..."

Violation of **Sections 2878.5 (c)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

- (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug or the prescription, consumption, or self-administration of any of the substance described in subdivisions.

Violation of **Section 2878 (e)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following...

- (e) Making or giving any false statement or information in connection with the application for issuance of a license."

Violation of **Section 2878 (f)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following..."

- (f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction..."

Explanation of Violation:

In the process of applying for your vocational nurse license, you completed and signed the *Record of Conviction Form* on or about August 15, 1994, that included the question "Have you ever been convicted of any offense, including traffic violations?" You answered 'yes' on the application, attesting to the accuracy and truthfulness of this information, signing the document under penalty of perjury. You attached only a DMV record reflecting a conviction on September 24, 1994, for violating Vehicle Code Section 22349 Speeding greater than 65 MPH.

The Board received documentation from the Tulsa Municipal Court substantiating your January 22, 1969, conviction for shoplifting. In addition, the Board also received documentation from the Sacramento Superior Court substantiating your April 7, 1971, conviction for violating Health and Safety Section 11501 Transport/Sell Narcotic. **You failed to disclose these convictions on your application for licensure as required.**

Fine and/or Order of Abatement

You are hereby ordered to pay an administrative penalty (fine) in the amount of **\$1,000.00** within **thirty (30) calendar days after service of the citation.**

Payment of this administrative penalty should be made directly to the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833. Payment will only be accepted in the form of a cashier's check or money order and must include the citation number. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.

Appeal Rights:

You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within **fourteen (14) calendar days after service of the citation.**

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within **thirty (30) calendar days after service of the citation.**

Please refer to the enclosed Statement of Rights for additional appeal information. Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, **your license will not be renewed** until the fine is paid.



TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

ATTACHMENTS

1/25/12
Date

- Payment of Fine – Waiver of Appeal Rights
- Notice of Appeal
- Statement of Rights

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